

# Disciplinary and Other NASD Actions

## REPORTED FOR JUNE

NASD® has taken disciplinary actions against the following firms and individuals for violations of NASD rules; federal securities laws, rules, and regulations; and the rules of the Municipal Securities Rulemaking Board (MSRB). The information relating to matters contained in this *Notice* is current as of the end of May 2005.

### Firms and Individuals Fined

**Actinver Securities Inc. (CRD #41139, Sugar Land, Texas) and Alvaro Madero (CRD #2155183, Registered Principal, Mexico City, Alabama)** submitted a Letter of Acceptance, Waiver and Consent in which they were censured and fined \$20,000, jointly and severally. Without admitting or denying the allegations, the firm and Madero consented to the described sanctions and to the entry of findings that Actinver Securities, acting through Madero, sold shares of a mutual fund to its customers in violation of the firm's membership agreement, which did not permit the firm to engage in mutual fund sales at the time. The findings also stated that Madero, acting on behalf of Actinver Securities, failed to designate one or more appropriately registered principals in its main office with the authority to carry out the firm's supervisory responsibilities as required by NASD Conduct Rule 3010(a)(4). **(NASD Case #C10050017)**

**First Security Investments, Inc. (CRD #24035, Kingston, Pennsylvania) and Stephen Maynard Alinikoff (CRD #1022014, Registered Principal, Kingston, Pennsylvania)** submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$35,000, jointly and severally. Without admitting or denying the allegations, the firm and Alinikoff consented to the findings that First Security Investments, Inc., executed riskless principal transactions and failed to disclose the amount of its markup/markdowns on the confirmations that it sent to its public customers for these transactions. The findings further stated that Alinikoff failed to ensure that the firm complied with this disclosure requirement. **(NASD Case #C9A050022) Firms and Individuals Fined**

**Greenwich Global, LLC (CRD #37304, Wilton, Connecticut), Timothy James Daly (CRD #1460203, Registered Principal, Norwalk, Connecticut), and Alice Jean Solomon (CRD #1789872, Registered Principal, Highlands, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$15,000, jointly and severally. Without admitting or denying the allegations, Greenwich Global, Daly, and Solomon consented to the described sanctions and to the entry of findings that Solomon served as Greenwich Global's Limited Principal-Financial and Operational without registering with NASD as a Limited Principal-Financial and Operational by taking and passing the appropriate qualification exam. The findings also stated that Greenwich Global, acting through Daly, its CEO, and President, failed to comply with its membership agreement in that the firm made a material change in its business activities without giving prior

notification to and receiving approval from NASD. The findings also included that the firm, acting through Daly, failed to establish, maintain, and enforce written procedures to supervise its options and variable annuity business. **(NASD Case #C11050014)**

**Pond Equities, Incorporated (CRD #30934, Brooklyn, New York) and Stephen Joshua Greenberg (CRD #2324570, Brooklyn, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which Pond Equities was censured and fined \$30,000, including disgorgement of \$3,800 in transactional profits. Greenberg was fined \$10,000 and suspended from associating with any member firm in all capacities for 20 business days. The firm shall review its system and procedures regarding the purchase and sale of restricted securities for compliance with NASD rules and federal securities laws and regulations. Without admitting or denying the allegations, the firm and Greenberg consented to the described sanctions and to the entry of findings that Pond Equities, acting through Greenberg, sold shares of a stock to the public that were not registered, and no applicable exemption from registration applied. The findings further stated that in effecting sales of a company's shares to the public, Pond failed to comply with its obligations to exercise due care to prevent the sale of unregistered securities. The findings also stated that the firm lacked an adequate supervisory system and written procedures for sales of unregistered stock, and failed to provide sufficient guidance to its brokers to enable them to identify circumstances that should lead them to conclude the stocks are restricted; failed to instruct its brokers as to the steps necessary to conduct due diligence before selling stock that may be restricted; and failed to establish the steps supervisors or the compliance department needed to take to review transactions in such stock. NASD also found that the firm lacked systems to provide reasonable assurance that its brokers were conducting a reasonable investigation into whether securities were registered or subject to valid exemption from registration.

Greenberg's suspension began on May 16, 2005 and end with the close of business on June 13, 2005. **(NASD Case #CE4050001)**

**Wachovia Securities, LLC (CRD #19616, Glen Allen, Virginia), Larry Michael Phillips (CRD #362671) and Richard James DiCenso (CRD #67208, Lancaster, California)** submitted a Letter of Acceptance, Waiver, and Consent in which Wachovia Securities was censured and fined \$25,000; Phillips was fined \$20,000 and suspended from association with any NASD member firm for 10 business days; and DiCenso was censured and fined \$15,000. Without admitting or denying the allegations, the firm, Phillips, and DiCenso consented to the findings that Wachovia, acting through Phillips, created and distributed written communications that

failed to disclose adequately material facts regarding investment products and strategies, or made exaggerated, unwarranted, or misleading statements or claims regarding those products, or both. The findings also stated that the firm, acting primarily through DiCenso, failed to reasonably supervise a registered representative's written communications activities in connection with correspondences and sales literature. In addition, the findings stated that Wachovia failed to file Phillips' sales literature with NASD. The findings also stated that Wachovia failed to establish and maintain procedures that were reasonably designed to achieve compliance with NASD's requirement for filing sales literature within 10 days of first use. The findings further stated that Wachovia's written supervisory procedures improperly instructed the firm's managerial personnel on when written communication qualified as sales literature that needed to be filed with NASD.

Phillips' suspension began June 6, 2005, and will conclude at the close of business June 17, 2005. **(NASD Case #CE2050007)**

## Firms Fined

**Alpine Securities Corporation (CRD #14952, Salt Lake City, Utah)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$20,000, and required to revise its written supervisory procedures with respect to the Order Audit Trail System<sup>SM</sup> (OATS<sup>SM</sup>). Without admitting or denying the allegations, Alpine Securities consented to the described sanctions and to the entry of findings that it transmitted to OATS reports that contained inaccurate, incomplete, or improperly formatted data. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to applicable securities laws and regulations, and NASD rules concerning OATS. **(NASD Case #CLG050041)**

**Banc of America Securities, LLC (CRD #26091, Charlotte, North Carolina)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$15,000. Without admitting or denying the allegations, Banc of America Securities consented to the described sanctions and to the entry of findings that it failed, within 90 seconds after execution, to transmit through the Automated Confirmation Transaction<sup>SM</sup> System (ACT<sup>SM</sup>) last-sale reports of transactions in eligible securities and failed to designate through ACT such last-sale reports as late. The findings also stated that the firm failed, within 90 seconds after execution, to transmit through ACT last-sale reports of transactions in over-the-counter (OTC) equity securities. **(NASD Case #CLG050051)**

**Belle Haven Investments, L.P. (CRD #29278, Greenwich, Connecticut)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$25,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report at least 299 transactions involving Trade Reporting and Compliance Engine (TRACE)-eligible securities. The findings also stated that the firm violated Section 15c(3)(a) of the Exchange Act, Rule 15c3-3 thereunder, by accepting customer checks payable to itself rather than to its clearing firm. The findings further stated that the firm failed to enforce its written supervisory procedures relating to reporting transactions in TRACE-eligible securities and to the receipt and handling of customer funds. **(NASD Case #C11050008)**

**Delano Group Securities, L.L.C. (CRD #47619, Chicago, Illinois)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to implement an adequate written anti-money laundering (AML) compliance program. **(NASD Case #C8A050026)**

**Divine Capital Markets LLC (CRD #118212, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it engaged in securities transactions while failing to maintain its required net capital. **(NASD Case #C10050016)**

**Fifth Third Securities, Inc. (CRD #628, Cincinnati, Ohio)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$79,750. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to ensure that Forms U5 were filed in a timely manner with NASD. The findings stated that the firm failed to file MSRB Forms G36 for the primary offering of municipal underwritings within 10 business days after the final agreement to purchase, offer, or sell the securities, and for municipal underwritings within one business day after receipt of the official statement from the issuer. The findings also stated that the firm failed to enforce its written supervisory procedures with respect to the timely submission of Forms U5 and MSRB Forms G-36 with NASD. **(NASD Case #C8A0500034)**

**J.P. Morgan Securities Incorporated (CRD #18718, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$150,000. Without admitting or denying the allegations, the

firm consented to the described sanctions and to the entry of findings that it failed to take reasonable steps to ensure that its representations to NASD that specific shares would not be sold for specified periods of time from the initial date of the IPO would be adhered to. The findings also stated that the firm's supervisory system contained inadequate policies or procedures for monitoring restrictions on sales of securities held by individuals associated with the firm, which could not be sold for specified periods of time. **(NASD Case #CE2050008)**

**May Financial Corporation (CRD #3927, Dallas, Texas)** submitted an Offer of Settlement Letter in which the firm was censured and fined \$15,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, acting through an individual, it engaged in a securities business while failing to maintain sufficient net capital. The findings also stated that the firm, acting through an individual, filed inaccurate FOCUS reports, prepared inaccurate net capital computations, and failed to provide telegraphic notice of the net capital deficiencies. The findings further stated that the firm, acting through an individual, completed inaccurate reserve computations, failed to have the requisite amount of funds on deposit in the firm's reserve account, and failed to notify the SEC and NASD that it had failed to make the required deposit into its reserve bank account. **(NASD Case #C06040029)**

**Momentum Securities, LLC (CRD #39293, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$50,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it engaged in a securities business when its net capital was below the required minimum in contravention of SEC Rule 15c3-1. The findings stated that the firm failed to record liabilities owed to traders who participated in a "rebate" trading program sponsored by an affiliated company. The findings also stated that the firm failed to record on its financial statements the account payable for the amount of the rebates that the firm was to pass through the traders whose trading activity earned the rebates. In addition, NASD found that the firm failed to record \$400,000 in liabilities owed to certain employees for deferred bonus compensation and failed to record a \$1.2 million liability owed to NASDAQ. NASD also determined that the firm prepared inaccurate net capital computations, trail balances, and general ledgers materially overstating its net capital. NASD also found that the firm failed and neglected to provide notification that its net capital was below the required minimum and failed to file accurate FOCUS reports. The findings also stated that Momentum allowed persons associated with the firm to engage in the management of the firm's securities business without registering as principals of the firm. **(NASD Case #C06050008)**

**Morgan Stanley & Company, Incorporated (CRD #8209, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$150,000 and ordered to pay disgorgement of \$2,545,618.14. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to take reasonable steps to ensure that its representations to NASD that specific shares would not be sold prior to the expiration of lock-up periods would be adhered to. The findings further stated that the firm's supervisory system contained inadequate policies or procedures for monitoring restrictions on sales of securities, including securities held by firm affiliates or affiliated firms, which could not be sold for specified periods of time. The findings also stated that the firm's supervisory system contained inadequate policies or procedures for monitoring restrictions on sales of securities, which the firm had represented to NASD would not be sold for specified periods in connection with obtaining approval of the terms of an offering. (NASD Case #CE2050009)

**NBC Capital Markets Group, Inc. (CRD #18229, Memphis, Tennessee)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$15,000, and required to pay \$8,975, plus interest, in restitution to a public customer. Without admitting or denying the allegations, the firm consented to the described sanctions and the entry of findings that it failed to take the necessary steps to make an accurate determination of the value of municipal security transactions, resulting in the firm's purchasing the securities from the customer at prices that were below the fair market value, and failed to ensure that the transactions were executed at aggregate prices that were fair and reasonable. The findings also stated that the firm failed to ensure that the municipal securities purchase and sales transactions were approved by a municipal securities principal. (NASD Case #C05050016)

**Park Financial Group, Inc. (CRD #30582, Winter Park, Florida)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$12,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to establish and implement policies, procedures, and internal controls reasonably designed to achieve compliance with the Bank Secrecy Act and implement regulations thereunder, including the obligation to report suspicious activities as required. The findings also stated that the firm failed to provide for independent compliance testing to be conducted by a qualified outside party. NASD also found that the firm conducted a securities business while failing to maintain its required minimum net capital and filed a materially inaccurate FOCUS report in that its net capital calculation was inaccurate. (NASD Case #C07050026)

**Ryan Beck & Company, Incorporated (CRD #3248, Livingston, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$12,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to display customer limit orders immediately in NASDAQ securities in its public quotation, when each such order was at a price that would have improved firm's bid or offer in such security. The findings also stated that the firm failed to preserve for a period of not less than three years, the first two in an accessible place, the memorandum of broker orders. (NASD Case #CLG050040)

**Standard & Poor's Securities, Incorporated (CRD #5248, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$40,000, and required to revise its written supervisory procedures with respect to OATS. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to submit required information to OATS on 785 business days. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to applicable securities laws and regulations, and NASD rules concerning OATS. (NASD Case #CLG050042)

**Track Data Securities Corporation (CRD #103802, Brooklyn, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$105,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it executed short sale transactions and failed to report each of these transactions to ACT with a short sale modifier. The findings stated that the firm made available a report on the covered orders in national market system securities that it received for execution from public customers that classified orders incorrectly. The findings also stated that the firm published inaccurate information for its routing of non-directed orders in covered securities and failed to maintain documentation indicating whether certain orders in covered securities were directed or non-directed orders. NASD found that the firm failed to report through ACT last sale reports of transactions in NASDAQ National Market securities. In addition, the findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to applicable securities laws and regulations, and NASD rules concerning best execution, limit order display, trade reporting, books and records, registration of supervisors and order clerks, locked and crossed markets, Section 21(A)-related issues, short sales, OATS, and SEC rule 11Ac1-5. (NASD Case #CLG050044)



**UBS Financial Services, Inc. (CRD #8174, Weehawken, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$175,000, and required to pay restitution to public customers. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it sold securities to public customers for whom the investment was unsuitable. The findings also stated that the firm failed to maintain records disclosing the basis upon which its suitability determinations were made in its recommendations and sales to public customers of certain securities. The findings further stated that the firm included advertisements on its Web site that failed to adequately disclose and describe the risks of investing in managed futures products. **(NASD Case #CE3050009)**

**William Blair and Company, L.L.C. (CRD #1252, Chicago, Illinois)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$15,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to register an associated person with NASD as a Limited Representative–Equity Trader, where such person was engaged in proprietary trading, the execution of transactions on an agency basis, or the direct supervision of such activities. The finding also stated that the firm failed to immediately display customer limit orders in NASDAQ securities in its public quotation, when such order was at a price that would have improved the firm's bid or offer and the national best bid or offer for each such security, and the size of the order represented more than a de minimis change in relation to the size associated with the respondent firm's bid or offer in each such security. The findings further stated that the respondent firm transmitted to OATS reports that contained inaccurate, incomplete, or improperly formatted data. **(NASD Case #CLG050050)**

## Individual Fined

**Hany Samir Awadalla (CRD #2074306, Registered Representative, New York, New York)** submitted an Offer of Settlement in which he was censured and fined \$75,000. Without admitting or denying the allegations, the respondent consented to the described sanctions and to the entry of findings that he threatened an official of a public company in an attempt to obtain a fee for his firm's investment banking services that was larger than the company was willing to pay. **(NASD Case #CAF030058)**

## Individuals Barred or Suspended

**Joseph Abbondante (CRD #1879052, Registered Principal, Freehold, New Jersey)** was barred from association with any NASD member in any capacity and required to pay restitution in the amount of \$276,265 to public customers. The National Adjudicatory Council (NAC) imposed the sanctions following appeal of an Office of Hearing Officers (OHO) decision. The sanctions were based on findings that Abbondante (1) participated in private securities transactions without providing prior written notice to, and receiving prior written approval from, his member firm; (2) recklessly made material misrepresentations and omissions to public customers with respect to an investment fund; (3) engaged in outside business activities without providing prompt written notice to his member firm; and (4) knowingly facilitated another in providing false account statements to seven customers of his member firm. **(NASD Case #C10020090)**

**Terry Jon Atzen (CRD #8627, Registered Principal, Newberg, Oregon)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$88,342.51, including \$78,342.51 in disgorgement of financial benefits received, and suspended from association with any NASD member in any capacity for two years. The fine must be paid before Atzen reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Atzen consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without providing prior notice to, and receiving approval from, his member firms.

Atzen's suspension began at opening of business June 6, 2005, and will conclude June 5, 2007. **(NASD Case #C3B050008)**

**John Douglas Audifferen (CRD #2053214, Registered Representative, Brooklyn, New York)** was fined \$17,500, and barred from association with any NASD member in any capacity. The fine must be paid before Audifferen may request relief from any statutory disqualification. The sanctions were based on the findings that he purchased shares of stock for a public customer in the cash account of the customer at his member firm and knew, or should have known, that the customer did not have sufficient cash to cover the cost of the purchases. The findings also stated that Audifferen deposited his own funds into the customer's account to cover the cost of the purchases, thereby willfully violating Regulation T by directly or indirectly extending credit to or for the customer's account. In addition, NASD determined that Audifferen sold securities from the account of the public customer, received \$17,500 from the customer that represented, in part, proceeds from the sale, thereby obtaining the beneficial use of an extension of credit and willfully causing his member firm to

violate Regulation T. Moreover, the findings stated that Audifferen maintained his own securities account at his member firm, purchased and sold securities in the account, and knew he did not have sufficient margin or sufficient funds to cover the cost of the purchases, thereby causing his member firm to make an extension of credit to him in violation of Regulation T. NASD also determined that Audifferen failed to disclose information on his Form U4. (NASD Case #C10030095)

**Scott Anthony Bartlett (CRD #3211860, Registered Representative, Schertz, Texas)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Bartlett willfully failed to disclose a material fact on his Form U4 and failed to respond to NASD requests for information. (NASD Case #C06040033)

**James Michael Begale (CRD #16874, Registered Representative, Lombard, Illinois)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 90 days. The fine must be paid before Begale reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Begale consented to the described sanctions and to the entry of findings that he affixed a public customer's initials to a new account form and submitted the form to his member firm without the customer's knowledge or consent.

Begale's suspension began June 6, 2005, and will conclude September 3, 2005. (NASD Case #C8A050032)

**Geoffrey Sherwood Beitner (CRD #1065826, Registered Representative, Norfolk, Virginia)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for ten business days. The fine must be paid before Beitner reassociates with any NASD member following the suspension or before requesting and relief from any statutory disqualification. Without admitting or denying the allegations, Beitner consented to the described sanctions and to the entry of findings that he borrowed \$20,000 from a public customer, contrary to the firm's written procedures.

Beitner's suspension began May 16, 2005, and concluded at the close of business May 27, 2005. (NASD Case #C9A050018)

**Francios Belizaire (CRD #4495421, Associated Person, Irvington, New Jersey)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Belizaire falsified an authorization agreement for automatic deposits for public customers without the customers' knowledge, authorization, or consent. NASD found

that Belizaire failed to respond to NASD requests for documents and information. (NASD Case #C10040110)

**Michael Franklin Bestine (CRD #1879401, Registered Representative, Point Pleasant, New Jersey)** submitted a letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for six months. The fine must be paid before he reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations Bestine consented to the described sanctions and to the entry of findings that he settled a complaint with a public customer without the approval or authority of his member firm.

Bestine's suspension began May 16, 2005, and will conclude at the close of business November 15, 2005. (NASD Case #C9B050023)

**Roger James Blundell (CRD #2228388, Registered Principal, Boxford, Massachusetts)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$7,500 and suspended from association with any NASD member in any principal or supervisory capacity for 30 days. The fine must be paid before Blundell reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Blundell consented to the described sanctions and to the entry of findings that he failed to take appropriate action to supervise registered representatives of his member firm to prevent their violations and achieve compliance with applicable securities laws, regulations, and NASD rules.

Blundell's suspension began June 6, 2005, and will conclude at the close of business July 5, 2005. (NASD Case #C11050009)

**Elizabeth Susanne Brasler (CRD #4285019, Registered Representative, Santa Barbara, California)** submitted a letter of Acceptance, Waiver and Consent in which she was fined \$5,000, suspended from association with any NASD member in any capacity for two months, and ordered to pay \$112,018 in restitution to a public customer. Without admitting or denying the allegations, Brasler consented to the described sanctions and to the entry of findings that she recommended that a public customer invest in certain high-risk municipal bonds without having reasonable grounds for believing that it was suitable for the customer in light of the facts disclosed by the customer concerning her financial status, investment objectives, and risk tolerance.

Brasler's suspension began June 6, 2005, and will conclude August 5, 2005. (NASD Case #C02050033)

**Thomas James Burke (CRD #4582502, Registered Representative, Worcester, Massachusetts)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. The sanctions were based on findings that Burke forged the signatures of public customers on insurance and/or investment-related documents. The findings also stated that Burke submitted a falsified marketing expense report to his member firm. **(NASD Case #C9B050030)**

**Kevin John Cerruti (CRD #1094911, Registered Principal, North Long Branch, New Jersey)** submitted a letter of Acceptance, Waiver and Consent in which he was fined \$10,000 and barred from association with any NASD member in any principal or supervisory capacity. The fine must be paid immediately upon reassociation with any NASD member or prior to requesting relief from any statutory disqualification. Without admitting or denying the allegations, Cerruti consented to the described sanctions and to the entry of findings that he failed to supervise registered representatives and associated persons with a view to preventing violations of NASD's rules and federal securities laws. **(NASD Case #CLI050008)**

**John Sheldon Cotton (CRD #1835778, Registered Principal, Louisville, Kentucky)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Cotton consented to the described sanction and to the entry of findings that he engaged in a "ponzi-type" scheme involving funds totaling \$2,565,725. The findings stated that Cotton represented to public customers that the funds would be used to purchase securities from a private individual at a discounted price and then sold at the market price for an immediate profit. The findings also stated that Cotton did not purchase the securities and arranged for funds received from new investors to be wired directly to accounts of prior investors, purportedly representing investment profits without the knowledge or involvement of either of his member firms. NASD found that Cotton caused \$30,800 to be deposited into the securities account of public customers for the purpose of compensating them for trading losses in their accounts without the knowledge of his member firm. In addition, NASD determined that he created and sent a customer an account statement incorrectly reflecting an overstated value in the customer's securities account. **(NASD Case #C05040090)**

**Robert Payne Crider (CRD #3237093, Registered Representative, San Antonio, Texas)** submitted an Offer of Settlement in which he was fined \$15,000 and suspended from association with any NASD member in any capacity for one year. The fine must be paid before Crider reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without

admitting or denying the allegations, Crider consented to the described sanctions and to the entry of findings that he recommended and effected securities transactions in the account of a public customer without having a reasonable basis for believing the transactions were suitable based upon customer's investment objectives, financial situation, and needs.

Crider's suspension began May 16, 2005, and will conclude at the close of business May 15, 2006. **(NASD Case #C06050003)**

**Dan Robert Del Fium (CRD #4173034, Registered Representative, Las Flores, California)** submitted a letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Del Fium consented to the described sanction and to the entry of findings that he signed the names of public customers on an authorization form without the customers' knowledge or consent. **(NASD Case #C02050032)**

**David Leo Dennis (CRD #2451340, Registered Representative, Austin, Texas)** was barred from association with any NASD member in any capacity. The sanction was based on the findings that he participated in private securities transactions without providing prior written notice to his member firm. The findings also stated that Dennis failed to respond to NASD requests for information. **(NASD Case #C05040076)**

**Mark Joseph Deves (CRD #1977959, Registered Principal, Colorado Springs, Colorado)** was fined \$18,541, which includes disgorgement of \$8,541 in commissions received, and suspended from association with any NASD member in any capacity for one year. The sanctions were based on the findings that Deves engaged in outside business activities for compensation without prior written notification to his member firm.

Deves' suspension began May 2, 2005, and will conclude May 1, 2006. **(NASD Case #C3A040043)**

**Harold Philip Donnerstag (CRD #2691932, Registered Representative, Matawan, New Jersey)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Donnerstag failed to respond to NASD requests for information. The findings also stated the he entered into a settlement agreement with a public customer without his member firm's knowledge or approval. **(NASD Case #C9B040103)**

**Victor Anthony Duque (CRD #2177517, Registered Representative, Westbury, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. The

sanctions were based on findings that, in an attempt to settle a complaint by a public customer, Duque proposed settlement terms, and made settlement payments, to the customer without obtaining written authorization from his member firm. The findings also stated that Duque failed to respond to NASD requests for an on-the-record interview. (NASD Case #CLI050010)

**James Anthony Dvorznak (CRD #2874901, Registered Representatives, Bethpage, New York)** was barred from association with any NASD member in any capacity. The sanction was based on the findings that he effected unauthorized transactions in public customers' accounts. The findings also stated that Dvorznak failed to appear and provide requested testimony. (NASD Case #C07040097)

**Michael Blaise Doherty (CRD #1325333, Registered Principal, Bayside, New York)** was fined \$5,000 and suspended from association with any NASD member in any supervisory capacity for 10 business days. The sanctions were based on the findings that Doherty failed to take appropriate action to supervise a registered representative.

Doherty's suspension began May 2, 2005, and concluded at the close of business May 13, 2005. (NASD Case #C9B040036)

**Robert William English (CRD #1110587, Registered Principal, Butte, Montana)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$15,000 and barred from association with any NASD member in any principal capacity. Without admitting or denying the allegations, English consented to the described sanctions and to the entry of findings that he failed to supervise a registered representative. (NASD Case #C3B050009)

**Thomas Ray Femister (CRD #2783803, Registered Representative, Washington, District of Columbia)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. The sanction was based on findings that Femister converted funds of a public customer for his own use and benefit without the knowledge or authorization of the customer. The findings also stated that Femister failed to respond to NASD requests for documents and information. (NASD Case #C9A050019)

**Marc Aaron Frazier (CRD #2467261, Registered Representative, Centerville, Utah)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Frazier consented to the described sanction and to the entry of findings that he affixed, or caused to be affixed, the signature of a public customer to mutual fund letters of

acknowledgment without the customer's authorization, knowledge, or consent. (NASD Case #C3B050010)

**Mark Furmato (CRD #1823640, Registered Representative, Brielle, New Jersey)** submitted a letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Furmato consented to the described sanction and to the entry of findings that he improperly transferred profits from one account to another account to receive greater compensation. (NASD Case #C9B050029)

**Carol Anne Garrett (CRD #1988572, Registered Principal, Huntington, Connecticut)** submitted a Letter of Acceptance, Waiver, and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Garrett consented to the described sanction and to the entry of findings that she misappropriated \$76,728.51 in customer funds and her firm's payroll funds without the customer and firm's authorization or consent. The findings stated that Garrett failed to appear for an NASD on-the-record interview. (NASD Case #C11050007)

**Thomas Kennedy Gifford (CRD #2370665, Registered Representative, Wyckoff, New Jersey)** submitted a letter of Acceptance, Waiver and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Gifford consented to the described sanction and to the entry of findings that he effected transactions in the account of public customers without the customers' consent or authority. (NASD Case #C9B050027)

**Irene Weiner Goldberg (CRD #1282174, Registered Representative, East Norwich, New York) and Mitchell Louis Goldberg (CRD #1386682, Registered Principal, Syosset, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which each respondent was barred from association with any NASD member in any capacity. The sanctions were based on findings they engaged in a pattern of trading activity in a public customer's account that was excessive in light of the customer's objectives, financial situation, and needs. (NASD Case #CLI050011)

**Ernest Alexander Harris (CRD #714335, Registered Representative, Los Angeles, California)** submitted a letter of Acceptance, Waiver and Consent in which he was fined \$7,000, including disgorgement of \$2,000, and suspended from association with any NASD member in any capacity for 15 business days. Without admitting or denying the allegations, Harris consented to the described sanctions and to the entry of findings that he engaged in outside business activity, for compensation, without prior written notification to, or written approval from his member firm.



Harris' suspension began June 6, 2005, and will conclude at the close of business June 24, 2005. (NASD Case #C02050031)

**Darren L. Heyman (CRD #4372849, Registered Representative, Willemstad, Curacao)** submitted a Letter of Acceptance, Waiver, and Consent in which he was suspended from association with any NASD member in any capacity for four months. In light of the financial status of Heyman, no monetary sanctions have been imposed. Without admitting or denying the allegations, Heyman consented to the described sanction and to the entry of findings that he knowingly and intentionally engaged in a course of conduct where he was able, on behalf of his member firm's proprietary account, to sell (buy) shares of securities at prices that were higher/lower than he would otherwise have been able to obtain, but for his entry and execution of the one-share orders.

Heyman's suspension began May 16, 2005, and will conclude at close of business September 15, 2005. (NASD Case #CLG050054)

**Wesley Matthew Hiles (CRD #4368679, Registered Representative, Tamaqua, Pennsylvania)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Begale consented to the described sanction and to the entry of findings that he solicited public customers to purchase a variable annuity or other securities products, received instructions or authorization from the customers to invest the funds on their behalf in conformance with the solicitation, and thereafter misappropriated \$270,000 of the customers' funds for his own use and benefit. (NASD Case #C9A050021)

**Steven Joseph Iannini (CRD #2141254, Registered Representative, Mechanicsville, Virginia)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$40,000 and suspended from associating with any member firm in all capacities for six months. The fine must be paid before Iannini reassociates with any NASD member following the suspension or before requesting any relief from any statutory disqualification. Without admitting or denying the allegations, Iannini consented to the described sanctions and to the entry of findings that he facilitated the ability of a public customer of his member firm to avoid attempts to limit market-timing trading, thereby enabling the customer to continue market timing through sub-accounts of variable annuities. The findings also stated that through Iannini, the customer purchased annuities from two insurance companies for hedge funds and funds of funds it managed. NASD found that the customer systematically market timed sub-accounts of the variable annuities it purchased. NASD also found that with the assistance of Iannini, the customer was able to avoid restrictions by opening new contracts using purportedly

different hedge funds, naming different annuitants, and purchasing smaller contracts.

Iannini's suspension began June 6, 2005, and will conclude at the close of business December 5, 2005. (NASD Case #CE4050004)

**Roger Angelo Kapsalis (CRD #2159293, Registered Representative, Brooklyn, New York)** submitted a letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for nine months. The fine must be paid before Kapsalis reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Kapsalis consented to the described sanctions and to the entry of findings that he willfully failed to disclose material facts on his Form U4. The findings also stated that he effected securities transactions away from his member firm and failed to provide written notification to his member firm.

Kapsalis' suspension began May 16, 2005, and will conclude at the close of business February 15, 2006. (NASD Case #C10050018)

**Kevin Owen Kelley (CRD #1183995, Registered Principal, Norwalk, Connecticut)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. The sanction was based on the findings that Kelley engaged in outside business activities without providing prompt written notice to his member firm. The findings also stated that Kelley failed to appear for an NASD on-the-record interview. (NASD Case #C11050012)

**Scott Ronald Kemmerling (CRD #2105289, Registered Representative, Rochester Hills, Michigan)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for three months. The fine shall be due and payable either immediately upon reassociation with a member firm following the three-month suspension, or prior to any application requesting relief from any statutory disqualification. Without admitting or denying the allegations, Kemmerling consented to the described sanctions and to the entry of findings that he failed and neglected to provide prompt, written notice to his member firm of his outside business activities.

Kemmerling's suspension began May 16, 2005, and will conclude at the close of business August 15, 2005. (NASD Case #C8A050025)

**Thomas Francis Kennedy, Jr. (CRD #1230523, Registered Supervisor, Babylon, New York)** submitted a letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for five business days. The fine must be paid before Kennedy reassociates with any NASD member following the suspension or before requesting relief from statutory disqualification. Without admitting or denying the allegations, Kennedy consented to the described sanctions and to the entry of findings that he failed to adequately supervise a registered representative.

Kennedy's suspension began May 16, 2005, and will conclude at the close of business May 20, 2005. (NASD Case #C10050022)

**Shawn Allen Linneborn (CRD #3023329, Registered Representative, Depew, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Linneborn consented to the described sanction and to the entry of findings that he converted \$14,000, and attempted to convert an additional \$17,409.97, of a public customer's funds. The findings also stated that Linneborn failed to respond to NASD requests for information. (NASD Case #C9B050024)

**Yuan Lung Liu (CRD #2595053, Registered Principal, Diamond Bar, California)** submitted a letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Liu reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Liu consented to the described sanctions and to the entry of findings that he engaged in outside business activities for compensation without providing written notice to his member firm.

Liu's suspension began May 16, 2005, and will conclude at the close of business November 15, 2005. (NASD Case #C02050030)

**Scott Kenneth Lyons (CRD #2377884, Registered Representative, Portsmouth, Rhode Island)** submitted a letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Lyons consented to the described sanction and to the entry of findings that he converted \$20,000 of a public customer's funds. (NASD Case #C9B050028)

**Georgios Manou (CRD #4240321, Registered Representative, Rochester, New York)** submitted a letter of Acceptance, Waiver, and Consent in which he was fined

\$15,000 and suspended from association with any NASD member in any capacity for 45 days. Without admitting or denying the allegations, Manou consented to the described sanctions and to the entry of findings that he falsified a public customer's account records.

Manou's suspension will begin July 1, 2005, and will conclude at the close of business August 14, 2005 (NASD Case #C9B050025)

**James J. Mariani (CRD #2932631, Registered Representative, Hauppauge, New York)** submitted a letter of Acceptance, Waiver, and Consent in which he was fined \$15,000, including \$5,000 in disgorgement, and suspended from association with any NASD member in any capacity for 30 business days. The fine must be paid before Mariani reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Mariani consented to the described sanctions and to the entry of findings that he recommended and effected securities transactions in the account of a public customer without having reasonable grounds for believing that these recommendations and transactions on margin were suitable for the customer based on her financial situation, investment objectives, and needs.

Mariani's suspension began June 6, 2005, and will conclude at the close of business July 18, 2005. (NASD Case #C10050025)

**Dennis Leslie Marlow (CRD #600767, Registered Representative, Monument, Colorado)** submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Marlow consented to the described sanction and to the entry of findings that he created and distributed sales literature and advertisements without prior written approval from his member firm that omitted material facts and was misleading. (NASD Case #CAF040071)

**James Clifford McClure (CRD #2073666, Registered Representative, South Charleston, West Virginia)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 15 business days. Without admitting or denying the allegations, McClure consented to the described sanctions and to the entry of findings that he offered to share in losses in a public customer's securities account.

McClure's suspension began May 16, 2005, and concluded at the close of business June 3, 2005. (NASD Case #C9A050020)

**Alexander Stuart Mundin (CRD #2709187, Registered Representative, Richmond, Virginia) and Gregory Douglas Suskind (CRD #3056711, Registered Representative, Richmond, Virginia)** submitted a Letter of Acceptance, Waiver, and Consent in which Mundin was fined \$5,000, including disgorgement of \$3,277.72 in unlawful profits, and suspended from association with any NASD member in any capacity for five months; and Suskind was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Mundin and Suskind consented to the described sanctions and to the entry of findings that they facilitated the ability of a client of their member firm to avoid attempts to limit its market-timing trading, thereby enabling the client to continue market timing through sub-accounts of variable annuities. The findings also stated that through Mundin and Suskind, the customer purchased annuities from two insurance companies for hedge funds and funds of funds it managed and systematically market timed sub-accounts of the variable annuities it purchased. NASD also found that with the assistance of Mundin and Suskind, the client was able to avoid restrictions by opening new contracts using purportedly different hedge funds, naming different annuitants, and purchasing smaller contracts.

Mundin's suspension will begin June 20, 2005, and will conclude November 19, 2005. Suskind's suspension began June 6, 2005, and will conclude at the close of business July 5, 2005. **(NASD Case #CE4050003)**

**Gloria Rene Osorio (CRD #4520109, Registered Representative, Joliet, Illinois)** submitted a Letter of Acceptance, Waiver, and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Osorio consented to the described sanction and to the entry of findings that she failed to respond to NASD requests for documents and information. **(NASD Case #C8A050031)**

**Frank Anthony Passarella (CRD #2689136, Registered Representative, Mineola, New York)** submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Passarella consented to the described sanction and to the entry of findings that he directly or indirectly, by the use of the means or instrumentalities of interstate commerce or of the mails, knowingly or recklessly used or employed, in connection with the purchase or sale of securities, manipulative or deceptive devices or contrivances; and knowingly or recklessly effected transactions in, or induced the purchase or sale of, securities by means of manipulative, deceptive, or other fraudulent devices or contrivances. The findings also included that Passarella recommended transactions in securities without having reasonable grounds for believing such transactions were

suitable in light of the size and frequency of the transactions, the nature of the account, and the customer's financial situation and needs. In addition, NASD found that Passarella effected transactions in the accounts of public customers without their prior knowledge, authorization, or consent. **(NASD Case #C9B040106)**

**Kelly P. Paterno (CRD #2355542, Associated Person, Deerfield Beach, Florida)** submitted an Offer of Settlement in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for two years. The fine must be paid before Paterno reassociates with any NASD member following the suspension or before requesting relief from statutory disqualification. Without admitting or denying the allegations, Paterno consented to the described sanction and to the entry of findings that he engaged in fraudulent and deceptive devices and contrivances involving trading in stocks through the use of instrumentalities of interstate commerce, the mails, or a facility of any national securities exchange. The findings state that Paterno, acting through his member firm, failed to act with reasonable diligence to ascertain the best inter-dealer market for the subject securities and failed to act diligently to ensure that the prices paid by the customers were as favorable as possible under the prevailing market conditions at the time. In addition, NASD found that that Paterno has never been registered with NASD in any capacity, but functioned as an equity trader for the firm by entering and reporting trades on behalf of the firm, determining when and how to execute trades, directing trades to market makers or the firm's clearing firm, and conducting proprietary trades for the firm. The findings also included that the firm, acting through Paterno, failed to make and preserve order tickets for the transactions as required by Rules 17a-3 and 17a-4.

Paterno's suspension began May 16, 2005, and will conclude May 15, 2007. **(NASD Case #C05040054)**

**Mitchell John Pizzirusso (CRD #1093406, Registered Representative, Newark, New Jersey)** submitted a letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for 15 business days. Without admitting or denying the allegations, Pizzirusso consented to the described sanctions and to the entry of findings that he entered into an agreement with a registered representative in order to circumvent securities licensing requirements. The findings stated that Pizzirusso falsified a public customer's account records so that he appeared as the registered representative of record.

Pizzirusso's suspension will begin July 1, 2005, and will conclude at the close of business July 22, 2005. **(NASD Case #C9B050026)**

**Teron Jamal Porter (CRD #4779422, Associated Person, Missouri City, Texas)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for 18 months. The fine must be paid before Porter reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Porter consented to the described sanctions and to the entry of findings that he willfully failed to disclose a material fact on his Form U4. The findings also stated that Porter failed to timely respond to NASD requests for information.

Porter's suspension began May 16, 2005, and will conclude at the close of business November 15, 2006. **(NASD Case #C05050013)**

**David Alan Roth (CRD #2456284, Registered Representative, Newport Beach, California)** submitted a letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for three months. The fine must be paid before Roth reassociates with any NASD member following the suspension or before requesting relief from statutory disqualification. Without admitting or denying the allegations, Roth consented to the described sanctions and to the entry of findings that he participated in private securities transactions for which he expected to receive compensation, but did not receive prior written approval from his member firm.

Roth's suspension began June 6, 2005 and will conclude September 5, 2005. **(NASD Case #C02050028)**

**James Joseph Rovezzi (CRD #1341098, Registered Representative, Boynton Beach, Florida)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Rovezzi engaged in outside business activities without providing prompt written notice to his member firm. The findings also included that Rovezzi provided a written response to his member firm in which he falsely represented that he had not engaged in the outside business activities. **(NASD Case #C07040088)**

**Patrick James Sahli (CRD #1019843, Registered Representative, Taft, California)** submitted a letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity and must pay restitution to public customers and to his member firm before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Sahli consented to the described sanctions and to the entry of findings that he engaged in a scheme to convert funds, and converted customer funds for his own use and benefit without the customers' knowledge, authorization, or consent. **(NASD Case #C02050034)**

**Scott Thomas Schaul (CRD #2200484, Registered Principal, Norwood, Massachusetts)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for three months. The fine must be paid before Schaul reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Schaul consented to the described sanctions and to the entry of findings that he signed a public customer's name on a variable annuity contract application and on a letter authorizing the liquidation of the customer's mutual fund.

Schaul's suspension began May 16, 2005, and will conclude at the close of business August 15, 2005. **(NASD Case #C11050011)**

**Norair Allain Seferian (CRD #2674569, Registered Representative, Smithtown, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$2,500, and suspended from association with any NASD member in any capacity for 30 business days. Without admitting or denying the allegations, Seferian consented to the described sanctions and to the entry of findings that he failed to disclose a material fact on his Form U4.

Seferian's suspension began June 6, 2005, and will conclude at the close of business July 18, 2005. **(NASD Case #CLI050006)**

**Jeffrey Lynn Smith (CRD #4783827, Associated Person, Clint, Texas)** submitted a letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Smith consented to the described sanction and to the entry of findings that he misappropriated \$28,000 in insurance premium payments received from public customers without the customers' knowledge, authorization, or consent. **(NASD Case #C06050005)**

**Keith Everett Stahl (CRD #4826984, Registered Representative, Houston, Texas)** submitted a letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Stahl consented to the described sanction and to the entry of findings that he willfully failed to disclose material facts on his Form U4. **(NASD Case #C05050018)**

**Vernon Grant Stewart (CRD #1319855, Registered Representative, Indianapolis, Indiana)** submitted an Offer of Settlement in which he was fined \$2,500 and suspended from association with any NASD member in any capacity for two months. Without admitting or denying the allegations, Stewart consented to the described sanctions and to the entry



of findings that he willfully failed to disclose a material fact on his Form U4.

Stewart's suspension began June 6, 2005, and will conclude August 5, 2005. (NASD Case #C8A050001)

**Andrew Barrett Vaughey (CRD #2453108, Registered Representative, Seattle, Washington)** submitted an Offer of Settlement in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for two years. The fine must be paid before Vaughey reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Vaughey consented to the described sanctions and to the entry of findings that, by the use of instrumentalities of interstate commerce or the mails, he intentionally or recklessly employed devices to defraud public customers and their registered representative by making untrue statements of material facts and/or omitting to state material facts necessary to make the statements made by him, in light of the circumstances in which they were made, not misleading.

Vaughey's suspension began May 16, 2005, and will conclude at the close of business May 15, 2007. (NASD Case #C3B050004)

**Michael Lawrence Walters (CRD #1674530, Registered Representative, Allen Park, Michigan)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Walters consented to the described sanction and to the entry of findings that he prepared and submitted documents bearing the forged signatures of public customers that included authorizations to obtain payments for financial plans that were never provided and fees charged to customers' accounts without their knowledge or consent. The findings stated that Walters misused customer funds by using the documents bearing forged signatures to obtain payments and fees from accounts of customers at the firm for his own use or benefit and not the benefit of the customers. In addition, the findings stated that Walters failed to respond to an NASD request to appear to give on-the-record testimony. (NASD Case #C8A050035)

**Kevin Mark Weaver (CRD #2845934, Registered Principal, Dallas, Texas)** was barred from association with any NASD member in any capacity and ordered to pay \$547,468, plus interest, in restitution to public customers. The sanction was based on findings that Weaver engaged in the fraudulent offer and sale of unregistered securities in the form of limited partnership interests through ostensibly separate offerings to public customers, and each offering was made pursuant to a private placement memorandum that contained numerous misrepresentations and omitted to state several material facts.

NASD found that Weaver failed to respond to NASD requests to appear and provide on-the-record testimony. (NASD Case #C06040034)

**Ryan-Li Juck Tan Wong (CRD #4298343, Registered Representative, Wahiawa, Hawaii)** submitted a letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Wong consented to the described sanction and to the entry of findings that he attempted to convert a public customer's funds to his own use and benefit by submitting a wire transfer from his member firm in an attempt to transfer \$18,000 from the securities account of the customer to a bank account without the knowledge or consent of the customer. (NASD Case #C01050005)

**Paul Zdzieblowski (CRD #3029905, Registered Representative, Sterling Heights, Michigan)** was fined \$5,000, and suspended from association with any NASD member in any capacity for one year. The NAC imposed the sanction following appeal of an OHO decision. The sanctions were based on findings that Zdzieblowski willfully failed to disclose a material fact on his Form U4.

Zdzieblowski's suspension will begin at opening of business July 5, 2005, and will conclude at the close of business July 5, 2006. (NASD Case #C8A030062)

## Complaints Filed

NASD issued the following complaints. Issuance of a disciplinary complaint represents the initiation of a formal proceeding by NASD in which findings as to the allegations in the complaint have not been made, and does not represent a decision as to any of the allegations contained in the complaint. Because these complaints are unadjudicated, you may wish to contact the respondents before drawing any conclusions regarding the allegations in the complaint.

**Jose Antonio Alba (CRD #4680317, Registered Representative, North Bergen, New Jersey)** was named as a respondent in an NASD complaint alleging that he converted \$5,160 in customer funds at his member firm. The complaint also alleges that Alba failed to respond to NASD requests for information. (NASD Case #C10050021)

**Anthony Cipriano (CRD #2998665, Registered Representative, West Babylon, New York)** and **Anthony Rahama Whitter (CRD #2733252, Registered Representative, Mount Vernon, New York)** were named in an NASD complaint alleging that they acted knowingly or recklessly in making baseless price predictions, misrepresentations, and omissions of material facts to public customers. (NASD Case #C07050029)

**David Edward Cook (CRD #2503250, Registered Principal, Warren, Ohio)** was named in an NASD complaint alleging that he affixed the signatures of public customers to Individual Retirement Account (IRA) distribution forms and submitted the forms to a clearing house to cover margin calls in the customers' accounts without the customers' knowledge or consent. The complaint also alleged that Cook caused distributions from public customers' IRAs to cover margin calls in the customers' accounts without the customers' knowledge or consent. The complaint further alleged that Cook submitted falsified IRA distribution forms to NASD, purportedly signed by public customers and falsely claiming that the customers authorized the distributions to cover margin calls. In addition, the complaint alleged that respondent Cook failed to respond to NASD requests for information. **(NASD Case #C8A050030)**

**Timothy Bryan Dickey (CRD #2541369, Registered Principal, Durant, Oklahoma)** was named in an NASD complaint alleging that he recommended and effected investment strategies to public customers and effected the strategies without having a reasonable basis for believing that the strategy was suitable for the customers given their financial needs and conditions. The complaint also alleged that Dickey participated in private securities transactions without first providing written notice to and obtaining approval from his member firm. The complaint further alleged that Dickey failed to respond to NASD requests for information. **(NASD Case #C05050017)**

**Michael Wayne Gibson (CRD #1501602, Registered Principal, Sacramento, California)** was named as a respondent in an NASD complaint alleging that he committed theft and embezzlement with respect to the property of an elderly and dependant adult. The complaint also alleges that Gibson failed to respond to NASD requests for documents and information. **(NASD Case #C01050006)**

**James Brendan Hanley (CRD #1438024, Registered Representative, Malden, Massachusetts)** was named in an NASD complaint alleging that he effected excessive and unsuitable transactions in the accounts of public customers without written authority from the customers or acceptance of the accounts as discretionary by his member firm. **(NASD Case #C11050013)**

**Joseph Lee Karcagi (CRD #264316, General Securities Principal, Punta Gorda, Florida)** was named in an NASD complaint alleging that he participated in private securities transactions without providing written notice to his member firm of his involvement in these transactions. The complaint also alleged that Karcagi failed to appear for testimony and failed to respond completely to NASD requests for documents and information. **(NASD Case #C07050028)**

**Philip John Nociforo (CRD #1482682, Registered Representative, Sound Beach, New York)** was named as a respondent in an NASD complaint alleging that, in connection with public customers' variable life insurance applications, he completed and submitted various forms indicating that the customers did not have other life insurance coverage and that they were not replacing existing life insurance coverage with the new policies, knowing that this information was false. The complaint also alleges that Nociforo received checks totaling \$16,050.46 from public customers for the specific purpose of funding the customers' variable life insurance policies, deposited the checks into his personal bank account, obtained bank checks totaling \$6,020.75 and forwarded the checks to his member firm as initial premium payments of customers' life insurance policies, thereby converting the remaining \$10,029.71 for his own personal use and benefit without the customers' authorization, knowledge, or consent. **(NASD Case #C10050027)**

**John Gregory Oppenheimer (CRD #3178207, Registered Representative, Raleigh, North Carolina)** was named in an NASD complaint alleging that he effected, or caused to be effected, the liquidation of a public customer's mutual funds and the purchase of a variable annuity without the customer's authorization. The complaint also alleged that Oppenheimer forged, or caused to be forged, a public customer's signature on documents, including an annuity purchase application. The complaint further alleged that Oppenheimer failed to appear for testimony. **(NASD Case #C07050031)**

**Kevin W. Parsells (CRD #4210163, Registered Representative, Merganville, New Jersey)** was named in an NASD complaint alleging that he effected transactions on margin in the account of a public customer without the customer's prior knowledge, authorization, or consent. The complaint further alleged that Parsells failed to place a stop loss on a public customer's stocks, as requested by the customer. **(NASD Case #CLI050007)**

**Jennifer Cochrane Prussack (CRD #4405629, Registered Representative, Garland, Texas)** was named in an NASD complaint alleging that she made unauthorized withdrawals from the accounts of public customers and converted the funds for her own personal use and benefit without the knowledge, authorization, or consent of the customers. The complaint also alleged that respondent Prussack failed to respond to NASD requests for information. **(NASD Case #C06050006)**

**Marylan Katherine Taylor (CRD #2263196, Registered Representative, Aurora, Ohio)** was named in an NASD complaint alleging that she submitted a falsified certificate of completion of a continuing education course to the Kentucky Department of Insurance. The complaint also alleged that Taylor made herself the beneficiary of a public customer's

annuity without the customer's consent or knowledge. The complaint further alleged that Taylor willfully failed to disclose material facts on a Form U4 and failed to respond truthfully to requests for information by the state of Kentucky. (NASD Case #C8A050027)

**Robert Trevlin Stewart Jr. (CRD #1611243, Registered Principal, Richmond, Virginia)** was named as a respondent in an NASD complaint alleging that he received a check totaling \$165,000 from a public customer to be used to purchase an annuity, but he instead deposited the check into a bank account under his control and made withdrawals against that account, thereby misusing customer funds without the customer's knowledge, authorization, or consent. The complaint also alleges that Stewart failed to respond to an NASD request for information. (NASD Case #C3B050006)

#### **Firm Expelled for Failing to Pay Fines and/or Costs in Accordance with NASD Rule 8320**

**The Camelot Group, Inc.**  
Ft. Lauderdale, Florida  
(May 6, 2005)

#### **Firms Suspended for Failure to Supply Financial Information**

The following firms were suspended from membership in the NASD for failure to comply with formal written requests to submit financial information to the NASD. The action was based on the provisions of NASD Rule 9552. The date the suspension commenced is listed after the entry. If the firm has complied with the requests for information, the listing also includes the date the suspension concluded.

**Blue Marble Financial, LLC**  
Irving, Texas  
(February 1, 2005 to May 2, 2005)

**BMS International Inc.**  
Berglangebach, Germany  
(April 12, 2005 to May 16, 2005)

**Mount Yale Securities, LLC**  
Denver, Colorado  
(April 12, 2005 to May 20, 2005)

**National Clearing Corp.**  
Sherman Oaks, California  
(April 12, 2005 to May 2, 2005)

#### **Individuals Suspended Pursuant to NASD Rule Series 9510 for Failure to Comply With an Arbitration Award or a Settlement Agreement**

(The date the suspension began is listed after the entry. If the suspension has been lifted, the date follows the suspension date.)

**Ball, Ronald Clark**  
Ft. Lauderdale, Florida  
(May 6, 2005)

**Burt, Reginald Darnell**  
Stafford, Texas  
(April 28, 2005)

**Clark, Salvatore**  
Deer Park, New York  
(April 28, 2005 to May 4, 2005)

**Connor, Brian Paul**  
Venice, Florida  
(April 29, 2005)  
Connor's suspension was lifted May 12, 2005.

**Crihfield, Mark Keith**  
Germantown, Tennessee  
(April 12, 2005 to May 5, 2005)

**Driggers, Darren Alan**  
Spring, Texas  
(April 18, 2005)

**Elliott, Michael Scott**  
Sarasota, Florida  
(May 6, 2005)

**Fagan, Michael James Sr.**  
Ponchatoula, Louisiana  
(May 6, 2005)

**Hardesty, Clifford Allen**  
Austin, Texas  
(April 28, 2005)

**Jenak, Robert Brian**  
Boulder, Colorado  
(May 3, 2005)

**Rainner, Byron Sherrod**  
Plantation, Florida  
(May 6, 2005)

**Torrice, Jeffrey Peter**  
Grosse Point Woods, Michigan  
(April 18, 2005)

## **Individuals Revoked for Failing to Pay Fines and/or Costs in Accordance with NASD Rule 8320**

Greos, James W.  
Scottsdale, Arizona  
May 6, 2005)

Dudnik, Dennis A.  
Brooklyn, New York  
(May 6, 2005)

Scarso, Emanuele A.  
Brooklyn, New York  
(May 6, 2005)

## **Morgan Stanley to Pay \$2.7 Million for IPO Lock-Up Violations**

### **NASD Fines J.P. Morgan \$150,000, Goldman Sachs \$125,000 for Similar Violations**

NASD ordered three firms—Morgan Stanley & Co, J.P. Morgan Securities, Inc., and Goldman, Sachs & Co.—to pay more than \$2.9 million following sales of restricted securities in violation of lock-up agreements as required by NASD rules.

NASD censured the firms and ordered Morgan Stanley to pay a fine of \$150,000 and disgorgement of more than \$2.5 million in ill-gotten profits. J.P. Morgan was ordered to pay a fine \$150,000 and Goldman Sachs was fined \$125,000.

“NASD’s rules that regulate the underwriting process, including lock-up requirements, ensure that the underwriting terms and arrangements are fair and reasonable,” said NASD Vice Chairman Mary Schapiro. “Lock-up requirements may be imposed to bring underwriting compensation into compliance with NASD guidelines and to protect investors in IPOs from the potential for dilution and manipulation if underwriters were to sell large amounts of an IPO issuer’s shares into the aftermarket. These firms’ failure to have policies in place to ensure compliance with the rules and to minimize the opportunity for underwriters and related persons to realize a quick profit from the sale of pre-IPO shares hurt the integrity of the underwriting process and the confidence of investors.”

Each of the firms, or entities or individuals affiliated with the firms, acquired the securities from issuers in private placements prior to each issuer’s IPO. Each of the firms subsequently served as an underwriter of the issuer’s IPO. Under NASD rules, certain of the private placement securities were deemed underwriting compensation and were restricted from sale for a period of one year from the date of the IPO. In addition, NASD rules provided that if a member firm agreed to restrict the sale of securities for an additional period of time—one or two years—additional discounts would be provided to

the value assigned to the shares for purposes of determining underwriting compensation.

NASD’s Corporate Financing Department, which reviews the terms of public offerings of securities underwritten by NASD members, determined that the underwriting compensation for certain of the offerings was excessive. As a result, in order to lower the amount of underwriting compensation for certain offerings so it would not be deemed excessive by NASD, Goldman Sachs represented to NASD in writing that relatives of employees would not sell certain securities for three years from the date of the IPO. J.P. Morgan represented to NASD in writing that its officers and affiliated companies would not sell certain securities for three years from the date of the IPO. J.P. Morgan and Morgan Stanley also represented to NASD in writing, to obtain approval for other offerings, that affiliated entities would not sell certain securities for one year from the date of the offering. In addition, the registration statements for each of the offerings stated that the securities would not be sold for the specified periods. Despite the firms’ representations and NASD rules, securities were sold prior to the expiration of the specified lock-up periods.

Entities affiliated with Morgan Stanley sold shares in two offerings—Breakaway Solutions, Inc., and AsiaInfo Holdings, Inc.—prior to the expiration of the one-year lock-up period. As a result of the sale of these securities prior to the expiration of the lock-up period, Morgan Stanley received additional net profits of over \$2.5 million.

Five individuals related to employees of Goldman Sachs sold shares in one offering, PlanetRx.com, Inc., prior to the expiration of the lock-up periods.

NASD’s action against J.P. Morgan was taken against the firm as successor-in-interest to Hambrecht & Quist. An entity affiliated with Hambrecht & Quist, and officers of the firm, sold shares in four offerings—PlanetRx.com, coolsavings.com, Inc., Net2Phone, Inc., and Liberate Technologies—prior to the expiration of the lock-up periods.

Each of the firms violated NASD rules by failing to take reasonable steps to ensure compliance with the representations made to NASD regarding restrictions on the sale of the securities. Each of the firms also failed to establish and maintain an adequate supervisory system to ensure that securities would not be sold prior to the expiration of the lock-up periods.

Each of the firms settled the actions without admitting or denying the allegations, but consented to the entry of NASD’s findings.



## NASD Charges 15 Firms with Directed Brokerage Violations, Imposes Fines Totaling More Than \$34 Million

NASD imposed fines totaling more than \$34 million on 15 broker-dealers in connection with the receipt of directed brokerage in exchange for preferential treatment for certain mutual fund companies.

These cases, part of NASD's efforts to eliminate conflicts of interest in the sale of mutual funds, focus on brokerage firms involved in selling mutual funds to retail investors, as well as one mutual fund distributor. All of the cases involve violations of NASD's Anti-Reciprocal Rule, which prohibits firms from favoring the sale of shares of particular mutual funds on the basis of brokerage commissions received by the firm. Among other things, a firm may not recommend specific funds to sales personnel or establish preferred lists of funds in exchange for directed brokerage.

NASD found that the 14 retail firms, most of which sold funds offered by hundreds of different mutual fund complexes, operated "preferred partner" or "shelf space" programs that provided certain benefits to a relatively small number of mutual fund complexes in return for directed brokerage. The benefits to mutual fund complexes of these quid pro quo arrangements included, in various cases, higher visibility on the firms' internal Web sites, increased access to the firms' sales forces, participation in "top producer" or training meetings, and promotion of their funds on a broader basis than was available for other funds.

"When recommending mutual fund investments, firms must act on the basis of the merits of the funds and the investment objectives of the customers and not because of other benefits the brokerage firm will receive," said NASD Vice Chairman Mary L. Schapiro. "NASD's prohibition on the receipt of directed brokerage is designed to eliminate these conflicts of interest."

The mutual fund complexes that participated in these programs paid extra fees for enhanced visibility. The additional fees were typically based on a combination of sales and/or assets under management by the brokerage firm. Some of the complexes participating in the preferred partner programs paid part or all of the revenue sharing fees by the use of directed brokerage—that is, by directing a portion of the trades in the portfolios they managed to the trading desks of the firms participating in the program.

For firms that did not have the capacity to provide trade execution, trades were sent to designated third parties, which then remitted a portion of the trading commissions to the retail firms, although they provided no services in connection with the trade. These commissions were sufficiently large to pay for the benefits received by the funds as well as the costs of trade execution.

The retail firms generally monitored the amount of directed brokerage received to ensure that the fund complexes were satisfying their revenue-sharing obligations. The use of directed brokerage allowed the fund complexes to use assets of the mutual funds instead of their own money to meet their revenue sharing obligations.

NASD also censured and fined one mutual fund distributor, AllianceBernstein Investment Research and Management, Inc. AllianceBernstein paid for some of its shelf space obligations by having its affiliated investment adviser direct portfolio transactions to or for the benefit of firms to which the distributor owed revenue sharing fees.

The 15 firms and their respective fines are as follows (firms noted with asterisks are wholly owned subsidiaries of AIG Advisor Group, Inc.):

<b>Royal Alliance Associates, Inc.*</b>	
\$6,600,000	New York, NY
<b>H.D. Vest Investment Services</b>	
\$4,015,000	Irving, TX
<b>AllianceBernstein Investment Research and Management, Inc.</b>	
\$3,984,087	New York, NY
<b>Linsco/Private Ledger Corp.</b>	
\$3,602,398	Boston, MA
<b>Wells Fargo Investments, LLC</b>	
\$2,970,000	San Francisco, CA
<b>SunAmerica Securities, Inc.*</b>	
\$2,500,000	Phoenix, AZ
<b>FSC Securities Corp.*</b>	
\$2,400,000	Atlanta, GA
<b>Securities America, Inc.</b>	
\$2,400,000	Omaha, NE
<b>RBC Dain Rauscher, Inc.</b>	
\$1,700,000	Minneapolis, MN
<b>McDonald Investments Inc.</b>	
\$1,500,000	Cleveland, OH
<b>AXA Advisors, LLC</b>	
\$900,000	New York, NY
<b>Sentra Securities Corporation* and Spelman &amp; Co., Inc.*</b> (joint fine)	
\$780,000	Phoenix, AZ
<b>Advantage Capital Corp.*</b>	
\$450,000	Atlanta, GA
<b>Advest, Inc.</b>	
\$286,415	Hartford, CT

The fines imposed on eight of the firms—Royal Alliance Associates, SunAmerica Securities, FSC Securities Corp., Advantage Capital Corp., Sentra Securities Corp., Spelman & Co., RBC Dain Rauscher, and McDonald Investments—included charges relating to their failure to retain emails as required by the federal securities laws and NASD rules.

The fine imposed on H.D. Vest Investment Services included charges related to violations of NASD rules relating to non-cash compensation. H.D. Vest reimbursed brokers' expenses incurred in connection with certain firm training and educational conferences based, in part, on the brokers' sales of funds that participated in its preferred partner program, instead of giving equal weight to the sales of all mutual funds, as required by NASD rules.

H.D. Vest Investment Services, RBC Dain Rauscher, and McDonald Investments were also charged with violations of NASD's supervisory systems and procedures rule.

In settling these matters, the firms involved neither admitted nor denied the charges, but consented to the entry of NASD's findings.

NASD has brought five previous actions for similar violations, including a complaint that is still pending against American Fund Distributors and settlements with Quick & Reilly, Inc., Piper Jaffray & Co., Edward D. Jones & Co. L.P., and Morgan Stanley DW Inc.

### **Hedge Fund Manager Hilary Shane Barred, to Pay \$1.45 Million to Settle NASD, SEC Fraud, and Insider Trading Charges Related to Purchase and Sale of Compudyne PIPE Shares**

#### **NASD Investigation into Other Individuals, Entities Continuing**

NASD announced that Hilary L. Shane, a hedge fund manager formerly registered with First New York Securities, L.L.C. (FNY), has been permanently barred from associating with any NASD-registered firm and will pay more than \$1.45 million to settle NASD and Securities and Exchange Commission (SEC) charges of fraud and insider trading. The charges arise from Shane's purchase and sale of shares in a PIPE transaction.

Sanctions imposed by NASD include the permanent bar and a \$375,000 fine. Sanctions imposed by the SEC include a one-year suspension from associating with any investment adviser; an injunction from any further violations of securities law; disgorgement of more than \$296,000 in ill-gotten profits from insider trading; disgorgement of more than \$356,000 in ill-gotten profits from selling unregistered shares; an SEC civil penalty of \$296,785; and prejudgment interest of more than \$125,000.

"This case is part of NASD's ongoing commitment to dealing with abuses in the marketing and trading of PIPE shares," said NASD Vice Chairman Mary L. Schapiro. "These abuses are serious and warrant serious sanctions."

A PIPE (Private Investment in a Public Equity) is a private offering in which accredited investors agree to purchase restricted, unregistered securities of public companies. Only after the PIPE shares registration is approved by the SEC are investors free to sell them on the open market. PIPE shares can only be offered to "accredited" investors—investors with assets of \$1 million or more.

NASD found that in September 2001, Maryland's Compudyne Corporation and its placement agent, Friedman, Billings, Ramsey & Co., Inc. (FBR), offered sophisticated investors—on a confidential basis—a PIPE deal proposing to sell 2.45 million shares of common stock, which raised more than \$29 million. The restricted stock was offered at the below-market price of \$12 per share. NASD found that Shane, after agreeing to buy the Compudyne PIPE shares, established a short position in the stock while in possession of material, non-public information and used the PIPE shares, once they were registered, to cover the short position. In addition, NASD found that Shane made false statements to obtain the right to acquire shares in the PIPE transaction and caused extensive violations of NASD's short sale rules by FNY.

On Oct. 8, 2001, Shane and FNY Millennium Partners, L.P., a hedge fund that she managed, obtained the right to buy 475,000 shares in the Compudyne PIPE. NASD found that Shane obtained the shares by falsely certifying in the purchase agreements that she and the hedge fund had no intention of distributing the shares.

The Compudyne PIPE deal was not announced to the public until 11:44 a.m. on Oct. 9, 2001. Between 8:30 a.m. and 11:44 a.m. that day, before the public announcement, Shane and the hedge fund sold short 122,900 shares of Compudyne, while she was in possession of material, non-public information about Compudyne.

By Oct. 29, 2001, when the SEC approved the registration statement that allowed sale of the PIPE shares, Shane had sold short 455,000 shares of Compudyne. When the PIPE shares were registered, Shane and the hedge fund obtained the PIPE shares at \$12 per share and then used these newly registered shares to cover the short position at a profit.

In settling this matter with NASD, Shane neither admitted nor denied the charges, but consented to the entry of NASD's findings. In the SEC proceeding, Shane consented to the entry of a final judgment by the U.S. District Court and an SEC administrative order, without admitting or denying the allegations in the SEC's complaint.

NASD's investigation into other individuals and entities involved in the Compudyne PIPE is continuing.

### **SunTrust Capital Markets Fined \$100,000 for Failing to Register Research Analysts under New Rules**

#### **SunTrust's 48 Analysts Issued More Than 600 Reports without Taking Qualifying Exams**

NASD censured and fined SunTrust Capital Markets, Inc.—the Atlanta, GA-based bank-affiliated broker-dealer and investment bank—\$100,000 for failing to register its 48 research analysts under new NASD rules that took effect last year. This is the first NASD enforcement action involving the new registration requirements.

As of March 30, 2004, NASD rules require research analysts to be registered with NASD after passing new research analyst examinations. Persons who were already functioning as research analysts were granted a one-year grace period for meeting the new registration requirements, provided their firm applied for the research analyst registration by May 31, 2004—60 days following the effective date of the new requirement.

NASD found that SunTrust failed to apply for the research analyst designation for its 48 analysts by the May 31 deadline. As a result, the one-year grace period for passing the research analyst qualification examinations was not available to SunTrust's analysts. Nevertheless, during the period from June 1, 2004 to July 30, 2004, SunTrust's analysts continued to perform and publish research without taking and passing the research analyst qualification examinations.

NASD found that from June 1, 2004 through July 21, 2004, when SunTrust discovered its failure to submit the registration applications, SunTrust issued 438 research reports and/or updates. SunTrust issued another 202 research reports and/or updates between July 21, 2004 and July 30, 2004 after SunTrust realized that its research analysts had not been properly registered, and while it was seeking an extension of the filing deadline. Only on July 30, 2004, after its request for an exemption from the rule requirements was denied, did SunTrust cease issuing research reports.

"NASD's new analyst registration requirements are designed to protect investors, by helping to ensure that analysts are qualified to offer research opinions and understand their obligations under NASD rules," said NASD Vice Chairman Mary L. Schapiro.

By September 2004, 15 of SunTrust's analysts had qualified through examination. The remaining analysts were qualified by October 2004.

In settling this matter, SunTrust neither admitted nor denied the charges, but consented to the entry of NASD's findings.